## SUPREME COURT OF APPEALS | Royal makes the food pure,

Decision Involving the Tennessee and Virginia Boundary Line.

MARY OTHER IMPORTANT CASES.

Will Construed -- Evidence -- Equity Pleading -- Tenants in Common -- Conflict of Jurisdiction-Digests of Other Causes.

Following are digests of the opinions handed down by the Supreme Court of Appeals yesterday:

Miller vs. Wills, etc. Reversed. Opinion

by Judge Riely.

by Judge Riely.

Held. A court of equity will not as a general rule enjoin a mere naked trespans. But where the acts done or threatened would be destructive of the substance of the estate or are often repeated, or the injury would be irreparable, or whenever the remedy at law is inadequate an injunction is proper. Also in a case where the trespasser is pecuniarly irresponsible. The non-residence of the trespasser, as in this case, is entitled to much weight in determining the propriety of granting an injunction, for it would be unjust to turn off a citizen subjected to aggravated trespasses and leave him to seek redress at law in a foreign jurisdiction, having once properforeign jurisdiction, liaving once prop complete justice though it involve titles boundaries and remedies rightly pertain-ing to courts of law. Anderson vs. Har-

boundaries and remedies rightly pertaining to courts of law. Anderson vs. Harvey's heirs. 10 Grat., 386.

The lower court awarded the injunction, and the boundary line between Virginia and Tennessee being brought in question, a jury was impanelled to try several issues, mainly what is the true line and whether the land whereon the trespasses occurred lies north or south of it. They found that the land lies in Virginia, and that the line begins "on the summit of Pond Mountain, and runs due west beyond the land in controversy." On motion the court set the verdiet eside and dissolved the injunction, holding that the land lay in Tennessee, and dismissed the bill. Appeal.

This court discusses elaborately and at great length, the boundary line and holds that the true boundary line and holds that the true boundary to a compromise line beginning "on the summit of the White Top Mountain, where the northeast corner of the State of Tennessee terminates and follows a due west course to the top of the Cumberland Mountain, where the southwest corner of the State of Virginia terminates; that it lies midway between "Walker's" line and Henderson's line, which were also straight lines running due cast and west and upwards of two miles apart; and that it was marked when run with five chops in the shape of a diamond."

The United States Supreme Court (Virginia terminates).

it was marked when run wich are caops in the shape of a diamond."

The United States Supreme Court (Virginia vs. Tennessee, 185 U. S., 503) sustained the validity of the compromise line under the compact of 1803. In this suit the sole issue, so far as res adjudicata is involved is the actual location, upon the ground, of the compromise line of 1802.

the ground, of the completions

1802

2. While directing an issue out of chancery is a matter of discretion in the court it is not a mere arbitrary discretion, but it must be exercised upon sound principles of right and justice. A mistake in its exercise is ground of appeal. So also of the action of the court in approving or disresarding it. Beverly vs. Walden. 29 Gratt. 147; and many Virginia cases. Where the evidence is contradictory and evenly balanced, it is the practice, without good cause to the contrary, to abide by the verdict. Carter vs. Campbell, Gilmer, 170; Foushee vs. Lee, 4 Call, 279; Steptoe vs. Flood's administrator, 31 Gratt., 342.

WILL CONSTRUED.

Taylor vs. Fanver, etc. Affirmed, Opin-ion by Judge Buchanan.

Third. The balance I will and be-queath to my sisters or their heirs equal

to all."
The testator left several surviving sisters. One sister had died before the will was written, leaving children.
Held. Each sister living at his death takes an equal share disposed of by that clause, and the children or heirs of his sister's, dead at that time, take a share of seven wall value or such share as their

of equal value or such share as their mother would have taken had she been

FELLOW SERVANTS.

by Judge Buchanan.

R. working as a day laborer for the company, received injuries, which caused his death.

Lis death.

The company's business was quarrying imestone, &c., at Eagle Rock, and it had there a superintendent in general control and management. R., mentioned in the cause as "foreman," was employed to head up barrels of lime, to keep the time of the hands, superintend their work, which was to wheel wood to the blass to make sets to observe the lime. illns, to move cars to place of loading, and to load them. W., one of the gang receiving the same pay, and doing the lame work as the rest, usually directed receiving the same pay, and doing the lame work as the rest, usually directed them in their work, and it was their duty to obey him. When the accident occurred R. was absent, and W. was mechanically the directed the gaing to move two cars to the platform. After they had started, one car, W., leaving deceased pushing it, went with the rest for the other. About the time deceased got his car to the platform, the other car, which W. and the others had started, and from which they had removed their hands, it being a slight down grade—overtook decedent. The bumper struck him and inflicted fatal injury. Deceased knew they had gone back for the car, but W. did not warn him of its approach, as was frequently, if not usually, done under like circumstances. Deceased had been with the company five or six years, and had been warned not to walk behind the cars when moving them, though it was a common practice. Evidence tended to show that if deceased had been pushing the car on either side had been pushing the ear on either side of the humper, he would not have been injured, as the ends of the cars were nearly two feet apart when the humpers

Held I. W. was not a vice-principal, but relia 1. W. was not a vice-principal, but reliaw servant, and the case is con-trolled in this aspect of it by the de-cision of this court in Richmond Locomo-tive Works vs. Ford. 27 S. E. R., 507, where the subject is fully discussed. 2. One of the positive duties of a master is to adopt rules for the safety of his employes, where he is an angle of the

is to adopt rules for the safety of his employes, where he is engaged in a complex business, which requires such rules, and a failure to do so is such negligence as renders him responsible for injuries resulting from such failure. Wood on Master and Servant, Sec. 463; Morgan vs. Hudson River Ore and Iron Co., 31 N. E. R., 234. While defendant may not have adopted such rules and published them, it is not shown that there was anything in the nature of the work, which them, it is not show that the work, which made it necessary to enact rules, and its failure to do so was not negligence, unless it appeared that in the exercise of reasonable care the master should have foreseen the necessity for such rules, and it does not so appear. PRIORITIES. &C.

Evans Bros. vs. Roanoke Savings Bank. Reversed. Opinion by Judge Ketth, president. Judges Buchanan and

Keith, president. Junges Buenanan and Harrison dissenting.

M. owned a lot in Roanoke on part of which R. had given a deed of trust to secure the Old Dominion Loan Associa-tion, \$1,500, which was admitted to record October 2, 1892, and constitutes the first lien on that part of the lot covered by the deed. The next lien was a deed of payment of two negotiable notes for \$400 each, dated October 25, 1892, and payable, each, dated October 25, 1892 and payable, respectively at twelve and eighteen months. This deed, of even date with the noise, was admitted to record as of its date, and constituted a first lien upon that portion of the lot not covered by the former deed and the second lien upon



the portion so covered. ising liens, R. berrowed of the Covenant etc., Association, of Knoxville, Tenn 31.300, tendering a deed of trust upon the part of the lot on which there was only the lien to secure M. Meantime the notes to M. had been endorsed to the Roanoke Savings Bank which holds them as an innecessity nurshayer for value.

ROYAL BAKING POWDER CO., NEW YORK.

innocent purchaser for value.

Before the Knoxville Company paid over the money, it had the title examinod, and, ascertaining the existence of the liens, refused to make the loan. Therefore, R. induced M. the apparent owner of the first lien securing the two \$100 notes (which the Savings Pank now owned but of the transfer of which the Knoxville Company was ignorant to enter on the warrein of the dead ter on the margin of the deed book in which the encumbrance was recorded that it had been satisfied

to her, the effect of which was to re-lease the encumbrance. Code, sec. 258.

Thus the Knoxville Company became
the first liener upon so much of the lot
as was conveyed to trustees to secure the
lean made by it. The equity of the
Savings Bank was not affected. It had
acted in cond fauth had been its recover. acted in good faith, had lent its money after an examination of the record which showed that the notes purchased by R

showed that the notes purchased by it were secured by a first lien; yet by a fraudulent combination between the original payee of the notes and the grantor in the deed of trust the lien was marked "satisfied" and the legal title of the trustee in the deed to secure the notes, the benefit of which accrued to it by the assignment, was by this fraud defeated and rendered wholly valueless.

The Knoxville Company, ignorant of the situation, and with nothing to put it on inquiry as to the transfer of the notes dealt with the record as it found it. The result is that the deed to secure the notes held by the Savings Bank was released, so far as the Knoxville Company is concerned, and being an innocent purchaser relying upon the public record it stands before the court with an equity equal to that of the Savings Bank and with a legal title rest

being an innocent purchaser relying upon the public record it stands before the court with an equity equal to that of the Savings Bank and with a legal title vested in the trustee for its benefit.

Held: The equities being equal the legal title must prevail. Williams vs. Jackson, 17 Otto 478; Nat. Valley Bank of Staunton vs. Harman, 75 Va., 601.

Credit was extended R. for \$500 by E. on the basis of this property, who took a deed on the property already under a lien to the Old Dominion Loan Association, and a second lien to secure the notes to M. Part of this credit, \$469 was extended while the lien to the Savings Bank was in full force and effect by the record and further credit was refused until this lien was discharged. After it was marked "Satisfied." a further credit of \$131 was extended.

Held 2: As to the \$490 E. cannot be considered an innocent purchaser for value and without notice and there is grave room to doubt whether he can be so held as to the \$131, under the circumstances of this case; but that is a point it is not necessary to decide. The entering of "Satisfied" on the record while it operated as a release to that encumbrance, did not enure to put the legal title in the trustee in the dead made for E.'s benefit because upon this particular piece of trustee in the deed made for E.'s benefit because upon this particular piece of property the legal title was outstanding in the trustee in the deed to secure the Old Dominion Loan Association. As to the E31, E. was the purchaser of a mere equity—an equity equal to that of the Roanoke Savings Bank, but a junior equity which must be postponed to the elder. Williams vs. Jackson, supra.; Briscoe vs. Ashby, 24 Grant, 454.
Heid. Lastly: The decree of the lower court is erroneous in so far as it postpones the lien of the Knoxville Company to the Savings Bank, and to that extent is reversed; as to Evans it is affirmed; as

reversed; as to Evans it is affirmed;

EVIDENCE, EQUITY PLEADING

EVIDENCE, EQUITY PLEADING,
Barley &c., vs. Byrd & Co. Affirmed,
Opinion by Judge Kelth, P.
A bill to remove cloud from title to
41,000 acres of land in Bath, Highland,
Rockbridge and Augusta counties, alleging a grant by the Governor of Virginia
in 1795 to Thomas Wilson.
It is averred that a deed from Thomas
Wilson and wife to James Wilson, executed some time between 1795 and 1797 has
been lost, and the object of the bill is to
have a decree setting up this deed, and have a decree setting up this deed, and for general relief.

Stated briefly, the case hinges on the

Stated briefly, the case hinges on the ovidence, as to whether the alleged lost deed was ever executed and delivered.

There is a memorandum dated March 10, 1786, conceded to be in the handwriting of and signed by Bushrod Washingson, and by him and wife conveyed with general warranty to James Wilson, of Philadelphia, to be recorded in the Gen-eral Court." This paper was found among the papers of James Wilson, Its

antiquity and authenticity are establish-

The admission of such evi-Held, I: The admission of such evidence is in derogation of the ordinary rules and rests upon "moral necessity," and the operation of the exception is "limited to the character of the dealing to which the law has ascribed prima facis a destitution of the ordinary means of proof, viz: The daily sale and barter of merchandize and other commodities; the performance of services and letting of articles to hire, and probably the payment from time to time of money placed occurrence, and so trivial in their indi-vidual amount that the procurement of formal proof could not be expected, and would not compensate for the time neces-sary for the purpose." Price vs. Norton, 1 Wash, 76: Downer & Co., vs. Morrison, 3 Gratt, 350. Conceding that Bushrod Washington was the attorney at law of James Wilson, we know of no principle of law or evidence which would render the memorandum made by him evidence of the execution of the alleged deed.

be admissible as a declaration against his interest; nor does it admit the possession of the deed to be in Washington.

2: It is no part of the res gestae because not "so connected with the very transactions or fact under investigation as to constitute a part of it." Haynes case, 25 Gratt, 345.

II: A deed of trust made by James Wilson and wife to B and others contains rectiful that the said land was conveyed.

a recital that the said land was conveyed by Thomas Wilson and wife to James Wilson in fee simple by deed duly execut-ed. The original is not produced, nor its absence accounted for it appears to have been recorded in Philadelphia, where none of the lands lay, upon wholly insufficient authentication to have entitled it to record then or subsequently in Vir-ginia. Deeds properly attested for recor-dation, but recorded in a county where none of the conveyed lands lie (and, therefore not properly admitted to record

2: Though the answers contained much affirmative matter unsupported by proof, and therefore unavailable to that extent, they yet deny the whole equity of the bill: whereby the plaintiffs were put on proof of their case, and the defendants had a right to rely upon the weakness of that case. Nor can it be said that they falled to create a controversy because they introduced no evidence to refute the case made by the bill which they deny in their answers, and which is unsupported by sufficient proof on the part of the plaintiffs.

TENANTS IN COMMON.

TENANTS IN COMMON.

Woods vs. Early. Reversed. Opinion by Judge Cardwell.

In 1848, C. & F. bought a lot in Charlottesville, on which they built a house containing two offices, separated by a passage, on which both offices opened, and which was the only way of access to them and to a vacant lot in the rear.

There were afterwards sundry conveyances to divers persons each conveyance being only of the interest of the particular grantor. C., however, retaining his interest till his death in 1886; and in 1890, his widow and executrix conveyed to W.

his widow and executrix conveyed to W. & A. a "one-fourth undivided interest in he lot \* \* \* the other three-fourths unthe lot \* \* \* the other three-fourths un-divided interest in the property here-by conveyed belonging to C. D. F." In 1891, C. D. F. and wife converted "an un-divided interest in the law office now occupied by W. & A. \* \* \* provided that so long as the interior walls of the building \* \* \* remain unchanged the said bassage way or hall shall continue for the joint use and benefit of the owners of the two officers aforesaid." In 186, Early acquired all of C. D. F's interest in the property "bounded on the north by a line extending through the centre of the hall or passage which separates in the property bounded of the derive by a line extending through the centre of the hall or passage which separates the office now sold from the office occupied by Samuel B. Woods, etc. Woods and Early could not agree as to partition or repairs and alterations and Early proceeded to take off the door at the front of the passage to cut the brick wall and to divide the passage through the midde. Injunction to restrain the alterations from exclusive possession of any part of the passage, to require replacing the door and to repair damage already done. Injunction dissolved with leave to file a petition or bill of review for a rehearing of the decree within fifteen days thereafter. Rehearing refused and petition for bill of review dismissed and appeal.

peal.

Held: The petition to rehear was properly dismissed. It could not be treated as a bill of review as the decree dissolving the injunction was not a final decree and the petition to rehear did not allege new and important testimony not known or accessible before former hearing and pointed out no error on the face of the decree.

2. Appellee in his answer to the original bill relied on the defence that there had been a paral agreement of partition between C. and F. or their grantees, or if, this were not true, that he as grantee of C. D. F. had a right to change the inner walls because C. D. F. had reserved that right to himself in his deed to W. & A., of ISM, and the trial court seems to have taken that view in dissolving the injunction. There is nothing in the record to sustain the contention of partition and the injunction should not have been dissolved.

are of an andivided interest in one or the other office and in none are restrictions on the use of the passage unless it be in the deed from C. D. F. and wife to W. & A., of 18d, and that deed does not admit of the construction contended for by the appellee. The contrary is the true construction, that the inner walls could not be changed by either party without the consent of the other. Cox cs. McMullen, 14 Gratt, 82.

Damages in repeated suits would not compensate in such a case. The injury is irreparable and calls for a preventive winedy such as equity only can supply. An irreparable injury is a grievous one, if at least a material one, not adequately reparable in damages, not necessarily such an injury that there can be no physical possibility of repairing. Sanderlin is, Eaxter, 76 Va. 365, and many cases itsel.

The injunction will be reinstated, with further proceedings therein as may appear in accordance with this opinion.
Lightner's Administrator vs. Speck, Administrator, Reversed, Opinion by Judge Cardwell.

This is a sequel to Lightner, etc., vs. Lightner, etc., decided at the November term, 1895, 23, S. E. R., 361. All questions of importance were decided in that case, nd certain exceptions to a commission-r's report are all that is passed upon

arst report, found that the son owed the ather at the inter's death \$1,564 for rent of a farm, but that he was entitled to have this sum, set off against \$2,496 for missioner Waddell, upon the same evimissioner Waddell, upon the same evidence finds the same sum due for rent, and allows only \$1,421 for improvements, leaving the son in debt some \$530. The Circuit Court confirmed Waddell's report and decreed that the son's widow and executrix pay the father's administrator \$1,327, and an appeal granted. These are the material statements.

Heid: 1. It was plainly error, on the record presented, to decree in favor of the father's administrator against the son or his executrix for rent accrued after the father's death. The rents, if any, belonged to the heirs at law of the father. They are asserting no claim thereto, nor has the son asserted any claim for improvements to the farm, but claims the farm itself. It would be the merest conjecture to say which commissioner is the farm. In view of the circumstances surrounding the parties and the unsatis-factory and conflicting character of the evidence, the court below should simply have dismissed the cross bill of the son without attempting to adjust the ac-counts, thus leaving the parties where they had, by their manner of dealing

CONFLICT OF JURISDICTION. Crafg and Bumgardner, Trustees, vs.

Hoge and Hutchinson. Reversed, Opinion by Judge Riely. A conveyance by M. to appellants of all his real and personal property in trust to secure four classes of creditors, with existing liens, vendors, and deeds of trust on parts of the realty. May 5, 1894, appellants filed their bill in the Circuit Court of Augusta for ascertainment of liens and their priorities, and this court acquired jurisdiction of the parties and the trust subject, the matter of the conthe trust subject, the matter of the con-troversy. In June, 1894, P., trustee in two

there) have been some times admitted as secondary evidence. Here the deed was never proved so as to be admissible to record in Virginia. There is no evidence of its authenticity, and it caused be little dued as secondary evidence as secondary evidence of its authenticity, and it caused to be the dued as secondary evidence of its authenticity as the secondary evidence of its secondary evidence of the secon

In November, 189, the flustings Court, with full knowledge of the other pending suit, and against the protest of appellants, directed its commissioner to ascertain the status of the case in the Circuit Court, whether any of the debts of the first and second classes were voluntary or fraudulent, &c., &c. On the same day, but a few hours later, the Circuit Court, then holding its, first term since appellants holding its first term since appellants brought their suit, referred the cause to one of its commissioners, for an account, tiens, &c. Such a decree had been ordered the previous day, but had not been en-tered on the order book because not then irawn by counsel.

drawn by counsel.

The Hustings Court, its commissioner having reported on the status of the case in the Circuit Court, enjoined appellants from disposing of any of the property, and at its next term overruled their exceptions to the commissioner's report, and ordered him to complete his report.

Held 1 Between courts of comcurrent jurisdiction, the court which first equires cognizance of the controversy or obtains possession of the property in dispute is emitted to dispose of it without interference or interruption from the co-ordinate

nce or interruption from the co-ordinate

tions which legitimately flow out of the subject matter of the controversy, and finally dispose of it. Weils on Jur. of Courts, Sec. 1%; Haden vs. Garden, 7 Leigh, 187. Many cases eited.

2. Jurisdiction is acquired by the Issue and service of process and priority of jurisdiction, in a case of conflict, is determined by the date of service. Bell vs. Ohio L. & T. Co., 1 Blas. 200; and other cases cited. The Hustings Court, when notified of the pending suit in the Circuit Court, should have refused to proceed in the case during its pendency in the prior autt.

ESTOPPEL.

er upon collection o company, to pay he o to pay coats, it being in condition grangement with he ey, and executed it hat sum, in which i

Held: One of the requisites to an equitable estoppel or an estoppel based on a party's conduct, is that he who claims the benefit of the estoppel mist show his ignorance of the truth as to the misrepresentations made, and that he was permissibly ignorant thereof. Bigelow on Estoppel, 50,605; Pom. Eq. Jur. sec. 895, in this case the receiver knew that the money had not been paid, notwithstanding the statement in the receipt given by appellant, but that a bond had been given for its payment; he is presumed to have known that the lien to secure its payment remained in full force, unless released or waived by appellant.

2: Another regulate is that the representation refled on must have been made with the intention, actual or reasonably

with the intention, actual or reasonably to be inferred by the person to whom it was made, that it should be acted on Bigelow 63-5. There is nothing in the record to show that appellant knew or record to show that appearant knew or had any reason to believe that the re-ceiver thought the debt had been satis-fied, or the Hen released or waived; or that she intended to mislead or deceive

him.

The appellant is not estopped from claiming a pro rata distribution with the receiver of the proceeds of sale of the collaterals held for the dayment of the unpaid purchase money, and the court be-low erred in so ruling. LATENT EQUITIES.

They are very popular. Also 54-inch Covert Cleth and 44-inch Serge and Diagonal, the Dress Fabric for street wear, really worth 69 and 78c., here to-morrow for 50c. Three Dieces of blue Diagonal, 38 inches wide, real value, 50c., here to-morrow for

Big Bargains To-morrow. hoice at 29c., 6 pieces of Black Vi-gro, 38 inches wide, real value 50c. 52-inch Black Storm Serge, real

50C.

'wo cases Men's Wool Fleece-Lined Shirts and Drawers, well-made and rts and Drawers, well-made at mished, all sizes, value 75c. Friday at 46c. 500 dozen boys' heavy, ribbed cotton Hose, with double knees, toes, and soles, high-splic-ed heels, fully 15c, values for Friday spe-cial.

12 1/2 C.

Ladies' Shirts. Ladies' bargains in Shirts, 50c. Fleece lined, ribbed Shirts for 25c. 11 and \$1.25 ladies Medicated Gray and White, pure wool Shirts.

8gc.

25 rolls best Tapestry Carpet.

Carpets.

With or without borders; also hall and stair patterns in new fall styles, absolutely fl value, at 52. Wilton Velvet Carpet, \$1.25 grado for

Urusual Barguins-\$1-3c. White Check Muslin for this sale, 5c. Apron 2 Juslin, 40 inches wide, sold for 17c. yard, for this sale,

One lot in stylish, all-wool Checks and
Mixtures that are this very day
sold at other stores for 39c. here
to-morrow, 25c. One lot of
fancy and plain Dress
material, such as Fancy Curls and Boucles.

89c., to-morrow & k Granite, black reeze Cloth, 80c. Freeze value,

For Bargain Friday.

Soc.

For Bargain Friday.

rolls of best Body Brussel Carpets
with norders or without borders, all
the latest colors and up-to-date
patterns, never sold anywhere for less than \$125,
to-morrow's special,

83c.

White Goods.

For Bargain Friday.

15 Ladies' New Kersey Jackets, lined with heavy silk, Franklin or fly front style, worth \$13, Friday special, \$8.48, \$16 Black Beaver Cape, heautiful braided and box front and back, trimmed in jet and fur for \$3.50

Children's Cloaks.

\$5 Children's Boucle Cloaks, Empire back, styles and prices cannot be matched for \$3.50

For Bargain Friday.

2,500 yards of percales in dark ground in figures, stripes and dots, full yard wide, 121/c, value for

For Bargain Friday. 25 pairs of Roman Stripe Damask Cur-tains, 13 value, for

\$1.08.

Chenille Curtains. They will go for \$1.89. Lace curtains for-pair,

\$1.00. Big Bargains.

They are worth \$2.19, taped all around, full length, 31-2 yards. For Bargain Friday.

25c. White Wool Flannel for this sale 16 2-3c. Another grade of heavy quality that sold for 33c., now 23C.

Red Flannel.

From 25 to 17c. Pure Medicated Flan-nel that sold for 33c., now

24C. See our Flannel bargains Friday!

## JULIUS SYCLE & SON, ..... THE TOWER .....

Many Items are not Advertised But Will Be Sold at Friday's Bargain Prices.

no lien for the deferred payment. Then Coyner and wife conveyed, together with other land , ten acres of this purchase to appellant to seeme a loan by a Loan Association. B. having failed to pay the sloop bond held by C., assignee, the question is which land must be subjected first to its payment; that still owned by B., or that which B. conveyed to Coyner. The general rule being the inverse order of the alienations and the land not sold by the debtor being subject first of all. Appellees insist that while no lien was expressly reserved in the conveyance from B. to Coyner, yet it was expressly arreed that it should be retained and was omitted by mistake; and that in pursu-

agreed that it should be retained and was omitted by mistake; and that in pursu-ince of said agreement the Coyner bond as turned over to C. and that Coyner hen and there undertook the payment & B.'s bond, held by C. for a like of B.'s bend, held by C. for a like amount, the payment to extinguish the Coyner bond to B. of all of which they insist appellant had notice. The Circuit

Court so ruled.
Hold: Though an equity constituting a vendor's lien could, as between B. and Coyner, he created by paral, about which Corner, be created by paral, about which no opinion is expressed, such an agreement could not affect the rights of the Loan Association, who are subsequent purchasers for value, unless it had notice. The records disclose no equity in favor of 11, and the proof is not sufficient to charge it with notice of B, claim. Before it can be affected by any latent equity between B, and Coyner the proof of such given must be clear and strong. there was nothing on the records to put ppellant on inquiry. The law does not

Blakemore vs. Wise &c. Opinion by Judge Harrison. Judgment Bens against Davis as fol-

Jougnest Jens against Parks as tollows:
One docketed February 1st, one July
29th, one August 19th, all in 184, and in
favor of appellant, P., and W., respectively. All are Bens on two tracts of land,
on one of which is a prior deed of trust
to its full value, the other unincumbered,
in October, 1891, Davis sold Skinner
thirty acres, who falled to record his
deed till March 19, 184, whereby the
judgment of appellant, docketed in Febcuary of that year, attached as a lien
before the deel was recorded. The other
judgments were docketed subsequently. udgments were docketed subsequently kinner borrowed \$2,000 September 10, 1894

The contention is that inflammen as appellant held the first judgment lien on all three tracts of land and voluntarily released the Skinner tract, he thereby limited his security to the prejudice of P. and W., and should be postponed to them to the extent of the value of the

Appeal.

Held: To invoke the doctrine of marshaling securities both sources of payment must belong to the common debtor;
the equity is not invoked against the
doubly secured creditor, and cannot be
invoked against the common debtor if
the course would trench upon the rights that course would trench upon the rights

tor entitled to the double fund. Adams Eq., m. p., 272; Russell vs. Dandolph, 26, Gratt., 717-18.

In this case both securities held by appellant did not belong to the common debtor Davis, His Judgment bound the land owned by Davis and that by Skinser, the purchase money secured by Neudor's lien was a mere chose in action that would pass to the assignee of the bonds. His judgment was not a lien on this chose in action, but an express sta-Yancey, trustee, vs. Blakemore &c. Reversed. Opinion by Judge Harrison.

W. and wife conveyed to B. a tract of land, reserving vendor's lien for deferred purchase money, three bonds of \$1.00 each, two of which were paid to W. and the third assigned to C. B. afterwards sold part of the land to Coyner, retaining

land still owned by Davis, and he could pell. Circuit Court Richmond city. Writ

land still owned by Davis, and he could be compelled to exhaust that before resorting to the Skinner land.

2. Appellant did not prejudice his rights by releasing his lien, and is entitled to have his judgment satisfied from the proceeds of sale as the first lien on the unencumbered land owned by Davis, and as the second lien on the tract on which there is a prior deed of trust.

SUMMARY.

Judge James Keith—Evans Brothers vs. Roanoke Saving Bank. Hustings Courtedly of Roanoke. Reversed in part and affirmed in part, Harrison and Buchanan, J. J. dissenting. Barley and others vs.

J. J., dissenting. Barley and others vs. Byrd and others, Circuit Court of Bath Jounty. Affirmed. Judge John W. Riely—Craig and Bum-

her, trustees vs. Hoge and Hutchin-Hustings Court city of Staunton. ersed. Miller vs. Wills, Circuit Court Speck, admr. Circuit Court of Au-sta county, Reversed. Woods vs. rrly. Circuit Court of Albemarle coun-

. Reversed. Judge John A. Buchanan-Mary L. Jor-Judge John A. Buchanan-Mary L. Jordon vs. Buena Vista Company. Circuit Court of Rockbridgecounty. Decree reversed. Taylor et als vs. Fauver. Circuit Court of Augusta county. Decree affirmed. Moore Lime Co., vs. Richardson's admx. Circuit Court of Bototourt county. Judgment reversed.

Judge Geo. M. Harrison-Yancey, trustics.

tee vs. Blakemore et als. Circuit Court of Rockingham county. Decree reversed, Blakemore vs. Wise et als. Circuit Court of Rockingham county. Decree reversed, APPEALS ALLOWED. Alexandria Board

Board of Supervisors of Alexandria ity vs. City Council of Alexandria. Ap-real allowed. Bond \$109. Circuit Court, ity of Richmond.
Tingle vs. Paul & Brother. Corporation Court of Manchester. Writ of error and supersedes. Bond \$200.
Frankin County vs. Glies & Johnson.
Creuit Court of Frankin county. Writ

of error. Bond \$100. City Bank of Norfolk vs. Reed & Son. Law and Chancery Court of Norfolk. Writ of error and supersedes. Hond \$1,000 Littell vs. Julius Lansburgh Carpet Co. Circuit Court of Alexandria. Appeal and

npersedes. Bond \$100. Besty vs. Barley et als. Corporation Court city of Alexandria. Appeal. Bond

Beaty vs. Downing, Circuit Court of Warren. Appeal allowed. Bond 1206. Union Central Life Insurance Co., v Pellard. Circuit Court, city of Richmo-Writ of error and supersides. Bo

Gent's exor, vs. Browning. Circuit Court of Russeit. Appeal and supersedes. Court of Russell. Appeal and supersedes.
No bond required.
Harris vs. Hackley &c. Circuit Court
of Rappahannock county. Appeal and
supersedes. Bond \$100.
Jackson's admr. vs. Jackson. Circuit
Court of Wythe county. Writ of error
and supersedes. No bond.
Bailey vs. McCance. Corporation Court
of Petersburg. Writ of error and supersedes. Bond \$2,500.
Cardwell. receiver vs. Kelley. Circuit

Cardwell, receiver vs. Kelley, Circuit ourt of Elchmond. Writ of error. Richmond Union Passenger Railway Co.

vs. R. F. and P. Railroad Co. Circuit Court of Richmond. Writ of error and supersedes. Bond \$806. Wood vs. Scherer. Circuit Court of Ronnoke county. Writ of error awarded. Bond \$50. Teese vs. Kyle. Circuit Court of Am-herst county.

county. Appeal and supersedes. herst County;

Bond \$100.

Smoot vs. People's Perpetual Loan and
Building Association. Circuit Court of
Roanoke. Appeal and supersedes. Bond

Ware vs. Bankers Loan and Investment Co. Circuit Court of Roanoke. Appeal and supersedes. Bond \$500.

Brooke vs. Turner. Corporation Court, city of Roanoke. Writ of error and sup-Bond \$100. APPEALS REFUSED. ersedes. Bo

German Fire Insurance Co. vs. Chap-

Check Crash, 81-3c. value for 21-3c.
Table Linen for 65c. Big
bargains—41 Napkins, for
this sale, 50c. 13c.
pure Linen
Towel
for

IOC.

Plaids. Worth lie, in remnants, new designs, beautiful for Walsts and Wrappers,

For Friday Bargains. Boys' and Girls' Golf Caps and Tam O'Shanters, 20c. Tam O'Shanters for this said.

22C.

Blue Tam O'Shanters. 75c. value for 42c.

Boys' Golf Caps for this sale, 14c. Great values to-morrow.

14C.

For Friday Bargains.

Furs is what you need. Il Mink Boas, &c. & Stone Marten Collar-ette for this sale \$150. Furs we will lead. See our Fur Bargains!

For Friday Bargain Sale.

Don't fall to see our Remnants of Canton Flannel, Black Dress Goods, Colored Dress Goods, etc. When buying remnants here

Money Will Re Saved. Flannelettes.

Remnants of Flannelette, \$1-5c. value for 5c.; 1216c. value for this sale, 614C.

For Friday Bargains. To-morrow will be Blanket day here. 31 Wool Blankets for this sale, \$2.50.

Comforts. From \$2 to 28c. Full-size Persian Comforts, fined with white cot-ton. The Sic. ones for 50c. They are full-size.

of error refused.

Neff vs. Commonwealth. County Court of Wythe county. Writ of error refused.

Swann vs. Estes &c. Corporation Court of Alexandria. Appeal refused.

Diffendati vs. National Vailey Bank of

Staunton. Corporation Court of Danville, Appeal refused.

Hodges vs. Commonwealth. County Court of Bland county. Writ of error

Kaufman et als vs. Cutchin, trustee et als. Hustings Court of Roanoxe. Appeal refused.

of Major R. Taylor Scott presented to this ed to be spread upon the records. Commercial Bank of Lynchburg vs. Milier et als. Argued by R. G. H. Kean for appellees and Major John W. Danici

for appellant and submitted.

Bradley Sait Co. vs. Norfolk Importing and Exporting Co. Argued by James E. Heath, Jr., for appellant.

\* W. W. SCOTT.

BEDFORD BANK CASES. A Demurrer Entered Against the Indicts

ment Before Judge John Paul. LYNCHBURG, VA., Nov. 18.—Special. Court, Judge John Paul presiding, began here to-day. At the regular fall term of the United States District Court in September, Mr. A. J. Montague, who had just been appointed to the attorneyship, temporarily, was unable to enter into the trial of Messrs. T. D. Berry and Chas. L. Mosby, of Redford City, on the charge of violating the Federal banking laws, and on his motion to-day was appointed as the time for taking up the case.

The principal charge against Messrs. Berry and Mosby is that of making false entries in the report of the new defunct First National Bank of Bedford City, to the Compitotic of Currency. Mr. Berry's counsel are Messrs. J. Trustey Coleman and George E. Caside, of this city, and Mr. Mosby's are Mr. Beverly T. Crump, of Richmond, and Mr. Nowlan, of St. Louis.

When court was genered this morning a

Of Richmond, and all. Nowas, of Schools.

When court was opened this morning a demurrer was made to the two indictments by counsel for defense and after a lengthy argument. Judge Paul took the matter under consideration and will render an opinion to-morrow morning.

If Judge Paul should sustain the demurer, it is believed that the case will be referred to the grand jury at the Harrisonburg term of court next month.

Greene County.

STANARDSVILLE, VA., Nov. ii.— Special.— A great many very fine fruit trees have been delivered to different parties in this county in the last few days. The most of them are apple trees. The farmers are inding out that they cannot make a better investment with their money and that the return in a few

passed for tine apples of a delightful

passed for the apples of a delightful taste and flavor. Rev. R. Q. Rhodes left yesterday morning for conference. A great many are very anxious to have him return to the field of like. this field of labor, as he is a good preach-

er and has done faithful work here.

Mr. Butler Fage, of Texas, who has been on a visit to his people near here left this morning to return home. Mrs. Long and two children, who have been to this county on account of ili health for some time, returned, also Mrs. Page to her home in Texas.

Another good audience enjoyed the music and comedy work of the splendid company that presented "The Geisha" at the Academy last night, and again did the performers reap the plaudits of those in front who appreciated then

cars would be greater in comparison o other products. Piedmont Virginia is certainly unsur-

To-night "In Atlantic City" will begin an engagement of two nights and a mat-